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Human Rights Council
Thirty-seventh session
26 February-23 March 2018
Agenda item 2
Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General

Written statement* submitted by Organisation internationale pour les pays les moins avancés, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement, which is hereby circulated in accordance with Economic and Social Council resolution 1996/31.

[2 February 2018]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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approach to conflict prevention and Human rights based peacebuilding in Yemen

As far as the International Organisation for LDCs (IOLDCs) is concerned with Yemen as one of the LDCs, where the situation of humna rights remaines fragile and the absence of the fundamental rights across the country, including, and the absence of children and women rights, the absence of the rule of law and the right of security and live, and the spread of famine and diseases due to the ongoing war.

The IOLDCs has carried out a comprehensive survey on the complexities and the constraints and the obstacles which hindered the efforts of the former Special Envoy for Yemen, and concluded that, the lack of awareness to the essence of the conflict and its root causes, the absence of the comprehensive vision of lasting solution, and the failure to deal with the crisis on the basis of human rights based approach instead of political based approach has led to decline the chances of the success of his mission. The IOLDCs believes that, any future negotiations will be carried out with the same manner of the previous ones would be fragile and will pave the way from its current conflict to new and multiple ones that could lead Yemen to join the countries of intractable crises.

For that reason, the IOLDCs has identified that, the key solution for the situation in Yemen should be started in tackling the root causes of the South-North conflict. The starting point is to highlight the plight of the Southern people, and to find an effective and practical solution for conflict prevention post-conflict and peacebuilding, alltogether with constructive proposals which could help the Human Rights Council to follow-up the matter with the Secretary-General and the UN Security Council towards promoting human rights, eradicating terrorism, eleminating intolerance and extremism and assisting the process of the implementation of the SDGs as follows:

1. Human rights violation started in1990 when the peremptory norms of general international law "jus cogens" have been breached by the Yemen Arab Republic by non-compliance with the requirements of the transitional period as stipulated in the unification agreement, followed by declaration of war over the South in April 1994 which left the door open for Al-Qaeda order to cultivat chaos and turmoil in the South, and caused several types of human rights violations, including gross violations, some of which could be considered as crimes against humanity.

2. The past years have proved that the current Yemeni situation, with all of its complication and conflicts, is a result of the "Yemeni Unification" that failed when born and was later imposed by force. This violent imposition of unity led to past, present and to future conflicts that affected not only Yemen but the entire region, threatening the international peace and security as evident in the last UNSC resolution No. 2342 of 28 February 2017on Yemen.

3. The Southern people have repeatedly petitioned to the UNHRC and to other UN organs including the UN Security Counsil to consider thier arguments and the facts based on peremptory norms of international law which could help the UNHRC to determine the root causes of the current situation in the South in order to recommend the UNSC to take apprpriate measures to avoid a new war disaster whose indicators are looming.

4. As the UNHRC aware, any agreement between two States from the standpoint of international law is less important than the treaty. Moreover, there are peremptory norms of general international law (jus cogens), which were accepted and recognized by the UN member states and no derogation or breach is permitted, but they can be modified only by a subsequent norm of general international law having the same character. These norms cannot be set aside or suspended, even upon the express consent of states. These norms consider any bilateral treaty or agreement between States with its legal force as void when it breaches the peremptory norms of general international law "jus cogens."

5. This breach can be witnessed in violating Article 60 of the Vienna Convention on the Law of Treaties on termination or suspension of the operation of a treaty as a consequence of its breach when the Vice

President Ali Salem Albidh at that time invoked the breach of the bilateral agreement by the Yemen Arab Republic and announced the re-establishment of the Democratic Republic of Yemen on 21 May 1994.

6. Since 1994 war, the South has been under the control of the Northern military and security forces, the Herak wa established in 2007, and the southern resistance was enabled to restore the South in 2015 which resulted in a new reality on the ground, where the Southern resistance took control over the Southern soil, followed by the establishment of the Southern Transitional Council that received extraordinary public support.

7. Today, the IOLDCs recognize that, the Southern Transitional Council seek a negotiation with the UN in order lead to a rearrangement of the relationship between the North and the South and an agreement to resolve the overlaps that occurred during the past two decades, and confirms its openness to any positive initiatives concerning the Yemeni crisis while taking into consideration the particularity of the Southern issue, and the real changes made on the ground in the south territory as a new outcome of the 2015 war , which should be addressed in isolation from the Northern crisis and its conflicting parties that seek to control the North.

8. The aim of the Southern Transitional Council is to restore the sovereign state, on the Southern soil, and to obtain its membership in the UN, and confirms that, the imminent State of the South will be qualified to enact according to the Charter of the United Nations, and it will comply with international law principles, and all regional and international agreements and treaties, including those that have been signed in the past since November 30,1967.

To prevent imminent catastrophe, whose consequences overwhelmingly affect all the region, the International Organisation for LDCs "IOLDCs" aimes at highlighting the plight of the voiceless Southren people and indicating an effective road map for conflict prevention, post conflict peace-building, for promoting human rights and implementing the SDGs in this country by encouraging the UNHRC to take appropriate plan of actions including the following measures:

1. To request the High Commissioner to include the Southern issue in his report to the Human Rights Council at its thirty-ninth session.

2. To request the New UN Special Envoy for Yemen to consider the Southern Issue separately as a starting point to achieve peace efforts towards achieving security, peace and stability in the region, and to resume negotuations based on SC resoulutions 924 and 931of 1994 which was stoped and to facilitae the arrangement the declaration of the re-establishment of the Two former States.

3. To request the UN Security Council pass a resolution that stresses international protection of the Southern people and the sending of UN troops to Yemen to secure the pre-1990 borderline between the South and North after exhausting peaceful means.

4. To to recomend the Security Council to deploy peacekeeping operation in accordance with Article 39 of Chapter VII of the Charter, which gives the authority to take its responsibility when it considers a conflict a threat to international peace and security. The presence of peacekeeping mission would help in coordinating the North-South separation process along the borders of the two states known before May 22, 1990, in normalizing the situation between the Two re-established, in monitoring the ceasefire on the borders, in playing a key role in supporting the independence of the South by carrying out the tasks of providing security and supporting the rule of law, as well as providing humanitarian assistance, supervising elections, providing advice and training in all areas of the State and assisting the South State in regaining its membership in the United Nations.

5. To encourage the former the representatives of the two former states, Yemen Arab Republic, and Demoratic Republic of Yemen to reinforce the need to rebuild a new geopolitical reality based on regional and international partnership that would help, after completing the rearrangements of the transitional period of the two states, to found elevated relations between the Two States deriving from good-neighborly

relationship and mutual cooperation that would assist in eradicating terrorism and extremism and achieving security, stability, and sustainable development.

6. To encourage the GCC to reinforces the need to rebuild a new geopolitical reality based on regional and international partnership that would help, after completing the rearrangements of the transitional period of the two states, and the need to promote strong relationship between the South and the Gulf Cooperation Council Council, as well as the importance of the South as a strategic depth for the neighboring states and an essential part of the Arabian Peninsula and its intersecting matrix of family ties, traditions, religion, language, history, aspirations, and mutual concerns.

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Agenda item 7
Human rights situation in Palestine and other occupied Arab territories

Written statement* submitted by the BADIL Resource Center for Palestinian Residency and Refugee Rights, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement, which is hereby circulated in accordance with Economic and Social Council resolution 1996/31.

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Please recycle

Extension of Israeli Sovereignty in oPt Amounts to Annexation

Introduction

1. Israel has been carrying out policies of annexation throughout the occupied Palestinian territory (oPt) since the beginning of the 1967 occupation. One of the main annexation policies cementing illegal Israeli sovereignty is the extension of Israeli domestic legislation to the oPt. In recent years, attempts at applying Israeli laws directly in occupied territory have intensified and recent Israeli plans and bills point to an overall governmental policy aiming at the annexation of Israeli colonies in the short term, and larger parts of the West Bank eventually.

Legal Framework

2. International Humanitarian Law (IHL) clearly establishes that the Occupying Power does not acquire sovereignty over the territory, that the occupation is a temporary situation, and that the occupier must respect the laws in force in the occupied territory,1 unless they constitute a threat to its security or an obstacle to the application of international law.2 These rules prohibit Israel from assuming sovereignty over the oPt and annexing parts of it into its own state. Combined, these acts directly challenge fundamental Palestinian rights, most importantly the right to self-determination.3 The denial of self-determination amounts to a serious breach of an obligation arising under a peremptory norm of international law.4

3. The acquisition of territory by force, also referred to as annexation, is another serious breach of international law.5 While annexation is not a legal category and there exists no set of definitive elements, "annexation presupposes the effective occupation of the territory in question and the clear intention to appropriate it permanently."6

Extension of Israeli domestic legislation to the oPt

4. Following the 1967 occupation, Israel immediately initiated measures to cement its control over Palestinian territory. One of the first actions was to de facto annex East Jerusalem, by applying Israeli laws directly to this part of the occupied territory.7 In 1980, the Israeli Parliament, Knesset, formalized East Jerusalem's annexation under Israeli law in violation of international law.

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1 *The Hague Regulations concerning the Laws and Customs of War on Land*, 18 October 1907, art. 43, https://ihl-databases.icrc.org/ihl/WebART/195-200053?OpenDocument [hereinafter *Hague Regulations*]; *Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War*, 12 August 1949, art. 64, https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=6DB876FD94A28530C12563CD0051BEF8 [hereinafter *IV GC*]

2 International Committee of the Red Cross, *Occupation and international humanitarian law: questions and answers*, 4 August 2004, https://www.icrc.org/eng/resources/documents/misc/634kfc.htm; Salwa Duaibis, "Responsibility and accountability of the occupying Power under international law", *United Nations International Meeting on the Question Of Palestine*, April 2013, 2, http://www.un.org/depts/dpa/qpal/docs/2013Addis/P1-%20Salwa*%20Duaibis%20E.pdf

3 See, UNGA Resolution A/RES/3070 (XXVIII), 30 November 1973, operative para. 2.

4 International Court of Justice, Advisory Opinion, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, 9 July 2014, http://www.icj-cij.org/files/case-related/131/131-20040709-ADV-01-00-EN.pdf

5Charter of the United Nations, 24 October 1945, 2(4), http://www.refworld.org/docid/3ae6b3930.html; Eyal Benvenisti, *The International Law of Occupation* (Princeton University Press, 1993), 5-6.

6 Rainer Hofmann, "Annexation," *Max Planck Encyclopedia of Public International Law*, February 2013, para. 1.

7 UN Security Council Resolution 478 (1980) [Territories occupied by Israel], 20 August 1980, S/RES/478 (1980), http://www.refworld.org/docid/3b00f1728c.html [hereinafter UNSC Res 478].

5. In the rest of the West Bank Israel has imposed a two-tier legal system whereby Israeli civil laws are extraterritorially applied to Jewish-Israeli colonizers (settlers), while Palestinians are subjected to military rule. Application of Israeli laws to colonizers in the oPt, ensures they are on legal par with those residing inside Israel.8 This constitutes an illegal expansion of Israeli jurisdiction into the occupied territory, unjustified by permissible exemptions within international law. The two-tier system imposes a clear discriminatory regime favoring colonizers and is a constant denial of the right to self-determination of Palestinians.9

6. Moreover, the two-tier legal system, allows for differentiated treatment that is solely based on nationality and religion, violating the fundamental prohibition on racial discrimination.10 This institutional and systematic discrimination also amounts to the crime of apartheid.11

7. Israeli civil law is applied to colonizers after being enacted by the Military Commander of the West Bank. The land on which the colonies are established is ruled by the laws in place in the oPt, in accordance to IHL. The 'Norms Law', approved by the Ministerial Committee for Legislative Affairs in November 2014,12 and re-tabled in June 2015,13 aims to change this situation. The 'Norms Law' gives the Military Commander the chance to issue recommendations for changes in formulation under special circumstances, but the Knesset would have the power to reject these changes and enforce the extra-territorial application of the laws.14 Although the Bill has not been approved yet, it is being discussed in the Knesset. If passed, it will make all Knesset laws directly applicable in Israeli colonies, making the Knesset the sovereign entity there.15

8. On 6 February 2017, the Israeli Knesset passed the 'Regularization Law' that legalized around 4,000 housing units in 53 colonial outposts built on private Palestinian land on the oPt.16 The Israeli Government Minister claimed the Bill is "[t]he first step towards complete regulation, namely, applying Israeli sovereignty over Judea and Samaria."17 This law retroactively legalizes any colonial outposts built on private Palestinian land under Israeli law, effectively allowing the illegal expropriation of private Palestinian lands, in contravention of international law.18 Moreover, this Bill is directly applicable to the outposts in the oPt as it circumvents the

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8 Association for Civil Rights in Israel, *One Rule, Two Legal Systems: Israel's Regime of Laws in the West Bank*, October 2014, https://www.acri.org.il/en/wp-content/uploads/2015/02/Two-Systems-of-Law-English-FINAL.pdf

9 United Nations Human Rights Council, *Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Richard Falk*, Resolution A/HRC/16/72, 10 January 2011, para. 32(b), https://unispal.un.org/DPA/DPR/unispal.nsf/0/A72012A31C1116EC8525782C00547DD4

10 UN General Assembly, *International Convention on the Elimination of All Forms of Racial Discrimination*, 21 December 1965, United Nations, Treaty Series, vol. 660, p. 195, http://www.ohchr.org/EN/ProfessionalInterest/Pages/CERD.aspx

11 Economic and Social Commission for Western Asia (ESCWA), "Israeli Practices toward the Palestinian People and the Question of Apartheid, Palestine and the Israeli Occupation, Issue No.1", 2017, 44-45, available at: http://www.badil.org/phocadownload/Non-Badil_Research_and_Reports/Reports/un_apartheid_report_15_march_english_final.pdf

12 Gilead Sher, "The Application of Israeli Law to the West Bank: De Facto Annexation?", *INSS Insight No. 638*, 4 December 2014, http://www.inss.org.il/publication/the-application-of-israeli-law-to-the-west-bank-de-facto-annexation/ [hereinafter Sher, "Application of Israeli Law"]

13 Diakonia, *Rule of Law: A Hardening of Illegality in Israel and the oPt 2014-2017*, December 2017, 24, https://www.diakonia.se/globalassets/blocks-ihl-site/ihl-file-list/ihl--reports/rule-of-law-a-hardening-of-illegality-in-israel-and-the-opt-2014-2017.pdf [hereinafter Diakonia, *Rule of Law*].

14 Sher, "Application of Israeli Law", *supra note* 12

15 Diakonia, *Rule of Law*, 24, *supra note 13*

16 Peace Now, *Legalization Law Will Stain Israel's Law Books*, 29 January 2017, http://peacenow.org.il/en/legalization_law

17 Andrew Carey and Emanuella Grinberg, "Israel's parliament passes West Bank outposts bill", *CNN*, 7 February 2017, http://edition.cnn.com/2017/02/06/middleeast/israel-knesset-west-bank-outposts-bill/

18 *Hague Regulations*, art. 46, *supra note* 1; IVGC, art. 53, *supra note* 1

Military Commander, and alters the land legislation establishing a different legal status for the colonies, which is strictly prohibited under IHL.

9. Israel is also currently considering to pass into law the Ma'ale Adumim colonial bloc annexation plan, which would give Israel sovereignty over 6,000 hectares of Palestinian land.19 Israeli Prime Minister Netanyahu has recently backed the "Greater Jerusalem Bill" that would annex a total of 19 colonies in the West Bank and place them under the municipal boundaries of Jerusalem.20

Ruling Party in Israel Calls for Annexation

10. On 31 December 2017, the ruling party in Israel, Likud, called for the annexation of Israeli colonies.21 Yuli Edelstein, Speaker of the Knesset said, "A year ago we signed a bill proposal to apply Israeli sovereignty to Ma'ale Adumim in order to create territorial contiguity between it and Jerusalem. There are those who seek to divide Jerusalem; we intend to expand it."22 Labor and Welfare Minister Haim Katz stated, "Judea and Samaria [West Bank] and Greater Jerusalem... are an inseparable part of the land of Israel and will remain so forever."

Conclusions

11. Israel's implementation of parallel legal systems serves to blur any distinction between its territory and that of the West Bank. Recent attempts to expand the applicability of Israeli laws, not only to colonizers but to the land as well, entrenches Israeli sovereignty in occupied territory. The effect is to place colonies and their occupants inside 'bubbles' of de facto Israeli sovereignty and connecting them to the state of Israel.

12. These legislative practices that extend Israeli sovereignty into the occupied territory coupled with Israel's colony expansion result in incremental annexation and challenge the inalienable right of the Palestinian people to self-determination.

Recommendations

13. BADIL is deeply concerned about the continuous failure of the international community to fulfill its obligations under IHL and calls upon third states, UN bodies and agencies, and regional bodies to take concrete measures to pressure Israel to cease its annexation and colonization policies.
14. BADIL also calls upon third states, UN bodies and agencies, and regional bodies to refrain from recognizing as legitimate or assisting in the sustainment of Israeli extension of sovereignty over the oPt.

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19 UNSC Res 478, *supra note* 7.

20 Peter Beaumont, "Netanyahu backs annexation of 19 West Bank settlements", *The Guardian*, 3 October 2017, https://www.theguardian.com/world/2017/oct/03/netanyahu-backs-annexation-of-west-bank-settlements

21 Reuters, Moran Azulay and Elior Levy, "Likud party calls for de-facto annexation of Israeli settlements", Ynet News, 1 January 2018, https://www.ynetnews.com/articles/0,7340,L-5064594,00.html

22 *Ibid.*

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Agenda item 3
Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Written statement* submitted by Organisation internationale pour les pays les moins avancés, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement, which is hereby circulated in accordance with Economic and Social Council resolution 1996/31.

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Please recycle

The 2030 agenda for sustainable development goals - Poverty and the Children in armed conflicts in LDCs

The Agenda 2030 recognized that, eradicating poverty in all its forms and dimensions, including extreme poverty, is the greatest global challenge and an indispensable requirement for sustainable development. Unfortunately, many LDCs are still far away from the realization of the Goals and Targets of its Plan of Action as poverty and hunger, violence and armed conflict are widespread and keep preventing the peoples of these countries from enjoying a life in which they can fulfill their potential in dignity and equality and in a healthy environment.

The International Organization for LDCs believes that, poverty is the major root cause of armed conflicts; meanwhile wars are a major cause of poverty, underdevelopment, and poor health conditions in the least developed countries. It is a vicious circle in which children are the most vulnerable victims of poverty, violence and armed conflicts.

Although, the Convention on the Rights of the Child is the most widely ratified human rights treaty and is further strengthened by its three Optional Protocols on the involvement of children in armed conflict, IOLDCs observed that there still a lack access to a child protection and that sale of children, child prostitution and child pornography are a daily reality in many LDCs.

The 17 Goals and Targets aim to achieve a world free of poverty, hunger, disease and conflicts should be implemented in the LDCs. All stakeholders need to act in collaborative partnership to implement the Plan of Action.

In many conflicts children take direct part in combats. However, their role is not limited to fighting. Most girls and boys are also used daily in so-called support functions that also entail great risk for their lives and immeasurable hardship.

Their tasks can vary, from combatants to cooks, spies, messengers and even sex slaves. Moreover, the use of children for acts of terror, including suicide bombings, has emerged as a phenomenon of modern warfare. Each year.

No matter their role, child soldiers are exposed to acute levels of violence – as witnesses, direct victims and as forced participants. Some are injured and have to live with disabilities for the rest of their lives.

The recruitment and use of children during conflict is one of the six grave violations identified and condemned by the UN Security Council. The six grave violations form the basis of the Council's architecture to monitor, report and respond to abuses suffered by children in times of war. Ending and preventing these violations is also the focus of the Special Representative's work and advocacy.

Most of these children suffering violence and armed conflicts try to flee. Still too often these children are perceived as unwanted interlopers rather than vulnerable victims and denied the protection they are entitled to. Indeed, in many cases, they lack access to a child protection authority, to an age and gender sensitive protection, and if necessary, age determination process, as well as to legal representation, to accessible information about their rights or about ways of seeking redress for the violation of their rights, and to support for their reintegration into society.

In **Yemen,** 7 million people are on the brink of famine and in the grips of the largest cholera outbreak in modern history. The war has killed or injured more than 5,000 children and left another 400,000 severely malnourished and fighting for their lives, according to UNICEF. Thousands of children are recruited in armed conflict, and 11 million of them, or nearly every child in Yemen, need humanitarian assistance.

In its last report UNICEF estimated that nearly 2 million Yemeni children were out of school, a quarter of them since the conflict escalated when the Saudi-led coalition intervened in March 2015. The report also reveals that more than 3 million children were born into the war and that they have been "scarred by years of violence, displacement, disease, poverty, undernutrition and a lack of access to basic services" from birth.

According to the charity, more than 50,000 children in Yemen are expected to die by the end of the year because of disease and starvation caused by the stalemated war in the country. Save the Children has warned. Consequently, an estimated 130 Yemeni children are dying every day and an estimated 400,000 children will need treatment for acute malnutrition this year,.

In **Somalia**, which ranks amongst the ten poorest countries in the world, where 43 per cent of the population live in extreme poverty and over half of the labor force are unemployed. The protracted conflict between the government of Mauricio and the illegal armed groups has affected the lives of millions of children. More than 300,000 children under the age of five are acutely malnourished, and 1.7 million children are out of school.

Children are especially vulnerable to health issues, in 2016 an outbreak of measles – a highly contagious viral disease that can lead to pneumonia, diarrhoea, encephalitis which causes brain swelling, and blindness. Since September 2016, 419 measles cases have been officially recorded, 302 of which are children under five. In Somalia, measles is a major cause of death among children – but it can be effectively prevented with a simple .vaccine

In **South Sudan**, deteriorating economic situation, with skyrocketing inflation, has triggered a food security crisis. An estimated 31 per cent of the population is experiencing severe food insecurity as of December 2016, and children are among the most vulnerable. The situation is expected to deteriorate further, with 276,343 children likely to be affected by severe acute malnutrition in 2017.

The war in South Sudan has brought misery to its children. They often face hunger, rape and other violence on their long, often-solitary walks to safety. The scale of the crisis in the world's youngest country is staggering. Renewed conflict since July 2016 has deepened a humanitarian crisis that, since the violence erupted in December 2013, has displaced over 3 million people, including 1.1 million who have sought refuge in neighboring .countries. Almost 70 per cent of the refugees are children

Over half the country's children are out of school – the highest proportion of out-of-school children in the world. Children remain at risk of recruitment by armed forces and groups and, with traditional social structures damaged, they are also increasingly vulnerable to violence, sexual abuse and exploitation.

For that reasons the IOLDC recommend the HRC to set-up an open-ended working group to set up a plan of action to protect children in the LDCs in crisis, especially where is most needed, like in Yemen, Somalia and South Sudan.

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Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Written statement* submitted by Associazione Comunità Papa Giovanni XXIII, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement, which is hereby circulated in accordance with Economic and Social Council resolution 1996/31.

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Please recycle

Maternal Surrogacy: a violation of fundamental human rights

At the 34th regular session of the Human Rights Council, the Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material, Ms Maud de Boer-Buquicchio, announced that her next report, to be delivered in the 37th regular session, would have focused on the issue of commercial maternal surrogacy. Unfortunately, such a report was not published before the official deadline for submitting the written statements. However, APG23 would like to express its view on the important topic of maternal surrogacy, even if it cannot comment on the report of the Special Rapporteur.

Heterosexual and homosexual couples, as well as single people, more and more frequently resort to maternal surrogacy to respond to the desire of having a child / of becoming parents, not being able to have children naturally for different reasons. This increasing phenomenon raises ethical and legal issues which not only concern the economic and functional exploitation of women's reproductive system, but also and foremost the defence of the rights of children born through maternal surrogacy.

This parenthood desire sometimes tends to be identified as a claim to turn this desire into a right.

Nonetheless, there isn't a legitimate right to be parents which entails the right to have a child and thus it cannot be recognized as such either as it is at odds with the whole human rights system.
The maternal surrogacy itself completely clashes with the universal ethics of the respect and dignity of all human beings, especially the most vulnerable, and thus it is incompatible with the promotion, protection and fulfilment of human rights.

Besides the unlawful aspects of the maternal surrogacy already mentioned[1] with reference to the violation of the woman dignity, to the exploitation of the surrogate mothers who live in poverty and to the commodification of human beings1, it is important to highlight also some aspects of human rights violation inherent in the theoretical concept of maternal surrogacy:

1) Throughout the last decade, heterosexual and homosexual couples have started to resort to maternal surrogacy in order to satisfy their desire of having children. We are not talking about giving a family to children who for different reasons do not have parents, as it is the case with adoptions. With the maternal surrogacy, we are talking about the creation ad hoc of a child solely with the intention of satisfying the adult's desire for parenthood, with the clear intention of separating the newborn from his/her natural mother.

A serious violence and violation of the system of human rights is hidden inside the overturn of the logic and of the interests at stake. This violence and violation consist in considering the conception, pregnancy and birth of babies as a commodity or a functional service that can be separated from their natural context and biological ties, which are linked to their origins and to their gestation, and birth.

Following the logic of "everything is possible and everything can be bought", some people want to legitimize the creation of a human being only to respond to the desire/claim for parenthood of an intended adult. Thus, the dignity and the rights of the child as well as the relationship with the woman who gave him/her birth are not respected. Moreover, this violation is justified by a manipulative interpretation of the "best interests of the child" principle (art. 3 CRC).

2) Maternal surrogacy contracts envisage that the gestational surrogate mother accepts that an embryo, selected by the intended parents, is implanted inside her womb. The woman compels herself to carry ahead the pregnancy and bear the child eugenically selected in order to deliver him or her to the intended parents right after the birth. In exchange, the

1 See A/HRC/31/NGO/147; A/HRC/34/NGO/154

gestational surrogate mother will receive compensation or she will be given a reimbursement of the expenses met during the pregnancy.

The surrogate mother is thus obliged to follow, during the pregnancy, all the instructions, given by the intended parents, which relates to the health of the child but also to the necessity of doing medical exams to control the health conditions and the development of the child, and in some cases, she can be even obliged by the intended parents to have an abortion.
Therefore, it is clear that "transferring" a healthy and flawless child "by any person or group of persons to another for remuneration or any other consideration" is the real object of the maternal surrogacy contract. This is the exact definition of "sale of children" as set forth in the article 2 of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography.
Moreover, we are clearly facing an evident violation of the fundamental norms protecting the human beings and their dignity. In the logic of the maternal surrogacy, the birth of a baby and the maternity are the object of a contract, introducing the confusion between persons and commodities. If the surrogate gestational mother has to deliver the newborn to other people, she then has to relinquish her maternal rights and her motherhood in favour of the commissioning parents. Therefore, the status and rights of a person become a commodity that is fungible and exchangeable, in clear contrast with the principles set forth in the articles 2, 3 and 4 of the Universal Declaration of Human Rights.

3) The maternal surrogacy is completely modifying the primordial concept of mother, breaking the identity existing between the genetic mother (oocyte donor, often anonymous) and the gestational/biological mother (the woman who is carrying out the pregnancy and bears the baby) and the legal mother (the intended/commissioning parent).
For the first time in the history, the identity of the mother has become uncertain. This is clear especially in the gestational maternal surrogacy, where the woman who accepts to carry ahead the pregnancy (gestational/biological mother) is different from the woman who offers her oocyte (genetic mother). Thus, the baby who is the result of this maternal surrogacy can even have up to three sets of parents: the genetic parents (when there is an oocyte and/or a sperm donor who are normally anonymous); the gestational/biological parent (the woman who carries the pregnancy to term); and the social/legal parents (the commissioning couple or the single adult to whom the baby will be transferred to after the birth).

The surrogate motherhood leads to the separation of the baby from the first two sets of parents, the only ones with which the baby has natural bonds, with a consequent break with her/his genetic and biological origins forcefully preventing him/her from knowing his/her social origins, roots and genetic makeup.

The maternal surrogacy violates the fundamental right of the child to know his or her origins, to preserve his or her identity and to grow up and live with his or her family (art. 8 and 9 CRC).2 Indeed, the surrogate motherhood contract is based on a serious violation imposed on the baby: the forced separation of the baby from the woman who should be his/her natural mother - the woman who carried ahead the pregnancy - and his or her natural family.

Therefore, the maternal surrogacy implies an abandonment of the baby, and this is decided before his or her birth or even before its conception.
In the name of their claimed desire of wanting a child and of taking care of him/her, the commissioning parents decide to deprive the baby of his or her genetic memory, biological bonds, roots and identity. This is also a clear violation of not only the best interests of the child but also of his/her fundamental rights, especially the preservation of his or her identity.

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2 Art. 8 CRC: "1. States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference. 2. Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity."
Art. 9 CRC: "States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interest of the child. (omissis)".

In this regard, it has become extremely urgent to recognize and widen the right of the child to know the genetic makeup, biological origins and bonds, social-historical roots as the broadening of the interpretation of the preservation of the personal identity, as foreseen in the articles 1 and 3 of the Universal Declaration of Human Rights.

For all the above-mentioned considerations and argumentations, APG23 asks the States to take a clear and strong position against the increased use of the maternal surrogacy, which violates not only the dignity of the woman simply seen as a means toward reaching the end of the other person (the commissioning couple), but it also violates the dignity and the fundamental rights of the child born through such a practice.